

SENATE BILL No. 288

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-13-36-1; IC 27-14.

Synopsis: Liability of medical directors. Requires a health maintenance organization to appoint a medical director who has an unlimited license to practice medicine in Indiana. (Current law allows a health maintenance organization to appoint a medical director who has an unlimited license to practice medicine in Indiana or an equivalent license issued by another state.) Provides for a duty of ordinary care for the medical director of a health insurance carrier, health maintenance organization, or other managed care entity when making health care treatment decisions involving covered services. Makes the medical director of a health insurance carrier, a health maintenance organization, or other managed care entity liable for harm resulting from health care treatment decisions made without exercising ordinary care.

Effective: July 1, 1999.

Miller

January 7, 1999, read first time and referred to Committee on Health and Provider Services.



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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 288

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 27-13-36-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Each health
3 maintenance organization shall appoint a medical director who has an
4 unlimited license to practice medicine under IC 25-22.5. ~~or an~~
5 ~~equivalent license issued by another state.~~
6 (b) The medical director is responsible for oversight of treatment
7 policies, protocols, quality assurance activities, and utilization
8 management decisions of the health maintenance organization.
9 (c) A health maintenance organization shall contract with or employ
10 at least one (1) individual who holds an unlimited license to practice
11 medicine under IC 25-22.5 to do the following:
12 (1) Develop, in consultation with a group of appropriate
13 providers, the health maintenance organization's treatment
14 policies, protocols, and quality assurance activities.
15 (2) Consult with the treating provider before an adverse



utilization review decision is made.

(d) Compliance with the most current standards or guidelines developed by the National Committee on Quality Assurance or a successor organization is sufficient to meet the requirements of this section.

SECTION 2. IC 27-14 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

ARTICLE 14. LIABILITY FOR CERTAIN HEALTH CARE TREATMENT DECISIONS

Chapter 1. General Provisions and Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Enrollee" means the following:

(1) With respect to a health maintenance organization, a:

(A) subscriber; or

(B) dependent of a subscriber;

who is covered by the health maintenance organization.

(2) With respect to a managed care entity that is not a health maintenance organization:

(A) an individual who is enrolled in a health care plan; or

(B) a dependent of an individual described in clause (A) who is covered by the health care plan.

Sec. 3. "Carrier" means a health insurance carrier, health maintenance organization, or a managed care entity through which a health care plan is operated.

Sec. 4. "Health care plan" means a plan under which a person undertakes to:

(1) arrange for;

(2) pay for; or

(3) reimburse any part of the cost of;

health care services through a carrier.

Sec. 5. "Health care provider" has the meaning set forth in IC 34-18-2-14.

Sec. 6. "Health care treatment decision" means a determination that:

(1) is made when medical services are provided by a health care plan; and

(2) affects the quality of the diagnosis, care, or treatment provided to an insured or enrollee of the health care plan.

Sec. 7. "Health insurance" means one (1) or more of the kinds of insurance described in Class 1(b) and Class 2(a) of IC 27-1-5-1.



1 **Sec. 8. "Health insurance carrier"** means an insurer (as defined
2 in IC 27-1-2-3) that provides health insurance.

3 **Sec. 9. "Health maintenance organization"** has the meaning set
4 forth in IC 27-13-1-19.

5 **Sec. 10. (a) "Managed care entity"** means an entity that, on
6 behalf of or as part of a health care plan:

7 (1) delivers health care services to a defined enrollee
8 population;

9 (2) administers the delivery of health care services to a
10 defined enrollee population; or

11 (3) assumes the risk for the delivery of health care services to
12 a defined enrollee population.

13 **(b) The term does not include:**

14 (1) an employer purchasing coverage or acting on behalf of:

15 (A) its employees; or

16 (B) the employees of one (1) or more subsidiaries or
17 corporations affiliated with the employer; or

18 (2) a pharmacy that holds a pharmacy permit issued by the
19 Indiana board of pharmacy under IC 25-26-13.

20 **Sec. 11. "Ordinary care"** means the following:

21 (1) With respect to the medical director of a carrier, the
22 degree of care that a medical director of ordinary prudence
23 would use under the same or similar circumstances.

24 (2) With respect to a person who is an employee, an agent, an
25 ostensible agent, or a representative of the medical director of
26 a carrier, the degree of care that a person of ordinary
27 prudence in the same profession, specialty, or area of practice
28 as the person would use under the same or similar
29 circumstances.

30 **Sec. 12. "Person"** means an individual, a corporation, a
31 partnership, a limited liability company, an unincorporated
32 association, the state, or a political subdivision (as defined in
33 IC 36-1-2-13).

34 **Chapter 2. The Duty of Ordinary Care**

35 **Sec. 1. (a)** This chapter does not apply to a carrier that is wholly
36 owned by a provider (as defined in IC 27-13-1-28).

37 **(b)** This chapter does not apply to worker's compensation
38 insurance coverage under IC 22-3-2 through IC 22-3-6.

39 **Sec. 2. The medical director of a carrier:**

40 (1) has the duty to exercise ordinary care when making health
41 care treatment decisions; and

42 (2) is liable for damages in compensation for harm to an

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insured or enrollee that is proximately caused by the failure of the medical director to exercise ordinary care.

Sec. 3. The medical director of a carrier is liable for damages in compensation for harm to an insured or enrollee proximately caused by a health care treatment decision made by an employee, an agent, an ostensible agent, or a representative of the medical director if, at the time the decision is made:

(1) the employee, agent, ostensible agent, or representative is acting on behalf of the medical director; and

(2) the medical director:

(A) has the right to exercise influence or control over the employee, agent, ostensible agent, or representative; or

(B) is actually exercising influence or control over the employee, agent, ostensible agent, or representative;

resulting in the failure to exercise ordinary care.

Sec. 4. In an action based under section 3 of this chapter on a health care treatment decision allegedly made by an employee, an agent, an ostensible agent, or a representative of a medical director of a carrier, it is a defense that:

(1) neither:

(A) the medical director; nor

(B) the employee, agent, ostensible agent, or representative for whose conduct the medical director is allegedly liable; controlled, influenced, or participated in the health care treatment decision in question; and

(2) the medical director did not deny or delay payment for any treatment prescribed or recommended by a health care provider to the insured or enrollee in question.

Sec. 5. Sections 2 and 3 of this chapter do not obligate a carrier to provide to an insured or enrollee treatment that is not covered by the health care plan.

Sec. 6. This chapter does not create liability on the part of:

(1) an employer;

(2) an employer purchasing group; or

(3) a pharmacy that holds a pharmacy permit issued by the Indiana board of pharmacy under IC 25-26-13;

that purchases coverage or assumes risk on behalf of its employees.

Sec. 7. A law prohibiting a carrier from practicing medicine or being licensed to practice medicine may not be asserted as a defense by the medical director of a carrier in an action brought under this chapter.

Sec. 8. In an action against the medical director of a carrier



1 under this chapter, a finding that a physician or another health
2 care provider is an employee, an agent, an ostensible agent, or a
3 representative of the carrier may not be based solely on proof that
4 the name of the physician or other health care provider appears in
5 a listing of approved physicians or health care providers made
6 available to insureds or enrollees under a health care plan.

7 **Sec. 9.** A person who brings an action under this chapter must
8 comply with IC 34-18.

9 SECTION 3. [EFFECTIVE JULY 1, 1999] IC 27-14, as added by
10 this act, applies to causes of action arising after June 30, 1999.

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